

In the matter of a Request for Review  
under section 25(1) of the  
*Agricultural Operation Practices Act*, RSA 2000, c A-7  
of a decision by an Approval Officer set out in  
Decision Summary LA18058A

---

**SUBMISSION OF**  
**NRCB FIELD SERVICES**

---

Fiona N. Vance  
Chief Legal Officer – Operations  
4<sup>th</sup> Floor Sterling Place  
9940 – 106 Street  
Edmonton, AB T5K 2N2  
ph: 780-422-1952  
e-mail: [Fiona.Vance@nrcb.ca](mailto:Fiona.Vance@nrcb.ca)  
On behalf of Field Services

## Introduction

1. The Hofer Family has requested that the Board review the decision of the Approval Officer in file RA18058A (Nelson Family Ranches Ltd.).

2. The Legislature has set out the task of the Board in section 25(1) of the *Agricultural Operation Practices Act* (“AOPA”), as follows:

**25(1)** The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board’s determination under section 20(8) that a person or organization is a directly affected party,

- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or
- (b) schedule a review.

3. Field Services takes no position on whether the Board should dismiss the application for review (RFR), or schedule a review. Field Services also takes no position on what matters should be included in a review, if the Board were to grant a review.

4. Field Services does not routinely make submissions on RFRs. In this case, however, Field Services feels it necessary to:

- a. identify the scope of the amendment decision;
- b. provide information relating to beef categories between 1995 and 2018, and
- c. provide context for the allegation of bias contained in the RFR from the Hofers.

### The scope of the amendment decision

5. The amendments made in LA18058A were to expressly recognize the category of beef animal permitted in Development Permit 98-25, and to make the dust control condition responsive to NRCB enforcement. Other concerns in the RFR should be addressed through compliance. In RFR letter RA02008A (Aug. 10, 2005) *Smoky Pork Ltd.*, the Board stated at p 3:

Several issues were raised in the filed Requests for Board Review that did not relate to the amendment and would therefore not have been considered by the Board, even if directly affected status had been granted. The Board advises that compliance and

nuisance concerns related to an Approval are more appropriately directed to the Compliance and Enforcement Division.

- [FS Authorities TAB 1]

### **Beef categories between 1995 and 2018**

6. In October 1998 when the County of Warner issued Development Permit 98-25, the 1995 *Code of Practice for the Safe and Economic Handling of Animal Manures* [FS Authorities TAB 2] was in effect. The 1995 *Code of Practice* identifies livestock siting unit (LSU) factors in Appendix C-1 and provides minimum distance separation (MDS) for beef in Appendix D-1.

7. In 1995 the MDS calculation was as set out in FS Authorities TAB 3. This is based on *The Application of the Minimum Distance Separation (MDS) for Siting Confined Feeding Operations in Alberta*, which is also included in TAB 3 of the FS Authorities.

8. Beef animal categories evolved in the two decades since Development Permit 98-25. The various Codes of Practice and AOPA Part 2 Matters Regulations are at FS Authorities TABs 2 and 4-8.

9. In 1998, the broad 450-1300 lb category represented calf to slaughter (finisher weight). There was no direct equivalent to the 450-1300 lb category after May 1999.

### **Context for the allegation of bias contained in the RFR**

10. Beginning at the second page of their RFR, the Hofer Family alleges bias on the part of the NRCB. The Field Services Materials (“FS Materials”) are intended to provide a more complete context for this allegation.

11. In May 2018 the Hofers alleged bias against NRCB Inspector, Denny Puszkas [2018-05-22 letter, FS Materials Tab F].

12. The NRCB takes such allegations seriously. In June 2018, the NRCB’s Acting Chief Executive Officer, Walter Ceroici, appointed Acting Compliance Manager, Kevin Seward, to investigate the allegation against Mr. Puszkas. Mr. Seward investigated and found no evidence of bias on the part of Mr. Puszkas. Mr. Ceroici advised the Hofers of this conclusion in July 2018 [2018-07-19 letter, FS Materials TAB I].

13. In September 2018, the Hofers alleged bias against Mr. Seward and asked Mr. Ceroici to reopen the investigation [two September 19, 2018 letters, FS Materials TABs K and L].
14. Mr. Ceroici did so and appointed Dr. Mike Iwanyshyn, Environmental Specialist with the Calgary NRCB office, to investigate the allegations made in May and September [October 12, 2018 letter, FS Materials TAB M]. Dr. Iwanyshyn's report is not yet complete at the time of signing this submission.
15. In their December 2018 RFR, the Hofer Family has added Approval Officer, Joe Sonnenberg, and Acting Chief Executive Officer, Walter Ceroici, to the bias allegations.
16. Field Services draws the Board's attention to the following documents in particular:
  - a. Mr. Ceroici's e-mail of January 23, 2017 sent erroneously to Mr. Hofer [FS Materials TAB A] was followed the next day by another e-mail from Mr. Ceroici [FS Materials TAB B].
  - b. Mr. Puszkar's record of the March 23, 2018 and May 8, 2018 meetings with the Hofers are at FS Materials TABs C and D, respectively.
  - c. Mr. North's May 22, 2018 letter to Mike Wenig (then Chief Legal Officer, NRCB) [FS Materials TAB F] expressed concern over the "local NRCB."
  - d. TAB H of FS Materials is Mr. Seward's confidential memorandum to Mr. Ceroici following his investigation into the bias allegation. Ordinarily the NRCB would not disclose a confidential internal document, but it appears necessary to do so given the persistence of the bias allegation from the Hofers.
  - e. The NRCB set up Project files in 2017 and 2018 to address inspection activities beyond the complaints – see FS Materials TABs O and P. We have not included all the entries from these Project files, but can do so upon request.
  - f. Mr. Puszkar and Mr. Seward each made in-house complaints about dust from the Nelson Family Ranches Ltd. feedlot on May 8 [Complaint LC18074, FS Materials TAB E] and August 22, 2018 [Complaint LC18133, FS Materials TAB J].

g. Mr. Seward has never been the primary inspector for the Nelson Family Ranches Ltd. feedlot site, as clarified by Mr. Ceroici in his October 12, 2018 letter [FS Materials TAB M].

17. The Hofer Family has provided insufficient evidence of actual bias on the part of the NRCB. Disagreement with Mr. Puszkars, Mr. Sonnenberg's, Mr. Seward's or Mr. Ceroici's regulatory conclusions does not equate to bias.

18. Nor has the Hofer Family met the test for reasonable apprehension of bias. The test is as follows:

...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly."

.... The grounds for this apprehension must, however, be substantial, and I . . . refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

- *Committee for Justice & Liberty v National Energy Board*, [1978] 1 SCR 369 at pp 394-395 – de Grandpré in dissent [excerpted at FS Authorities TAB 9]

RESPECTFULLY SUBMITTED THIS 10<sup>th</sup> DAY OF JANUARY, 2019.



Fiona N. Vance  
Legal Counsel, Field Services  
NRCB

## Field Services Authorities

### TAB Authority

1. RFR letter RA02008A (Aug. 10, 2005) *Smoky Pork Ltd.*
2. 1995 *Code of Practice for the Safe and Economic Handling of Animal Manures*
3. 1995 *Code of Practice* MDS calculation  
Alberta Agriculture & Forestry, *The Application of the Minimum Distance Separation (MDS) for Siting Confined Feeding Operations in Alberta*  
([https://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/epw2069](https://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/epw2069))
4. Addendum to the 1995 Code of Practice (May 3, 1999)
5. 2000 *Code of Practice for Responsible Livestock Development and Manure Management*
6. Alberta Regulation 257/2001, Agricultural Operations, Part 2 Matters Regulation
7. Alberta Regulation 90/2004, Agricultural Operations, Part 2 Matters Amendment Regulation
8. Alberta Regulation 193/2006, Agricultural Operations, Part 2 Matters Amendment Regulation
9. *Committee for Justice & Liberty v National Energy Board*, [1978] 1 SCR 369 (per de Grandpré in dissent) (excerpted)